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National and state legislation on exemption...

[New York?]

1917

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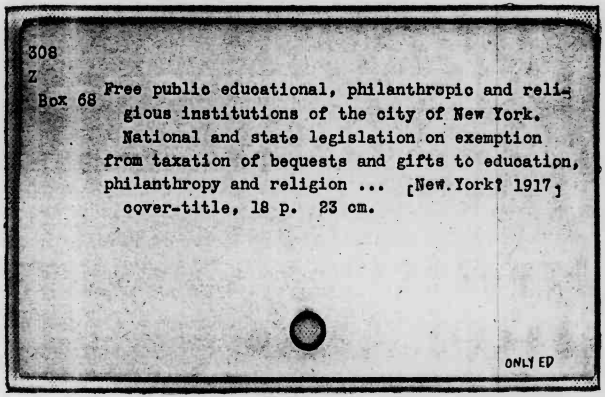
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NATIONAL AND STATE LEGISLATION

—ON—

EXEMPTION FROM TAXATION

—OF—

BEQUESTS AND GIFTS

—TO—

EDUCATION, PHILANTHROPY AND RELIGION

I. History and Analysis of the Federal Estate Tax Law (Act of September 8, 1916, as amended March 3, 1917) and Proposed Amendment.

II. Previous Federal Estate Tax Legislation and Exemptions.

III. Summary of existing State Legislation in reference to exemption of bequests for educational, charitable and other public purposes, from Inheritance Taxation.

IV. Gifts and Bequests to Education and Philanthropy, 1913 to 1915.

ISSUED BY REPRESENTATIVES
OF THE
Free Public Educational, Philanthropic and Religious Institutions of the City of New York
May 29, 1917

In the existing Federal Estate Tax Law, there is no exemption from such taxation. Attention is called to the proposed Amendment on Page 4.

June 30, 1917 AET

I. History and Analysis of the Federal Estate Tax Law (Act of September 8, 1916, as amended March 3, 1917) and Proposed Amendment.

A new Federal Estate Tax Law was approved September 8, 1916.

The tax imposed thereby is radically different from that imposed by the act passed during the Spanish War and those imposed by the statutes of most of the states. The latter are generally transfer or succession taxes and are imposed upon the right of succession to property through will or intestacy and the rate of tax is generally determined by the amount of the legacy, devise or distributive share passing to the respective beneficiaries under the will or intestacy.

The new Estate Tax law of 1916, on the other hand, imposes a progressive tax measured by the amount or size of the entire net estate passing upon the death of the decedent, subject to a deduction, in the case of residents, of $50,000. The rate of tax imposed ranges from 1% on the first $50,000 of the net estate up to 10% of the amount by which the net estate exceeds $5,000,000.

The tax is payable one year after the decedent's death, and unless otherwise directed by the will of the decedent is to be paid out of the estate before its distribution. The effect of this is to make the burden of the tax fall upon the residuary estate.

The amount of the taxable estate is arrived at by including not only the property of which the decedent dies possessed, but also all property of which at any time he has made a transfer or with respect to which he has created a trust, in contemplation of, or intended to take effect in possession or enjoyment, at or after his death, and it is provided that any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death, without fair consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of the law.

This federal estate tax law contains no exemptions whatever of property passing to educational or charitable uses.

It was amended by the act of March 3, 1917, and this amendment, which was applicable to the estates of all decedents dying after March 3, 1917, increased by 50% each of the rates prescribed by the act of September 8, 1916, thus raising the maximum rate to 15% upon the amount by which the net estate exceeds $5,000,000.

There is pending in Congress, passed by the House of Representatives and now before the Senate, a second act which imposes, in addition to the tax under the act of March 3, 1917, a further estate duty with progressive rates reaching a maximum of 15% upon the amount by which the net estate exceeds $15,000,000.

This proposed second act makes no change in the existing laws of September 8, 1916, and March 3, 1917, but simply creates an additional and more burdensome tax of like character.

In this second act as proposed also there is no exemption for educational and philanthropic bequests, legacies and gifts.

OPERATION OF THE NEW FEDERAL ESTATE TAXES UNDER THE ACT OF SEPTEMBER 16TH AND THE PROPOSED ACT

Rates of Duty under Act of September, 1916.			Rates of September, 1916, increased to the following by Act of March, 1917.		Additional rates under proposed Act.			Total Duty under existing and proposed Acts.
Net Estate	50,000.	1%	500.		50,000.	½%	250.	1,000.
	100,000.	2%	2,000.		100,000.	1 %	1,000.	4,000.
	100,000.	3%	3,000.		100,000.	1½%	1,500.	6,000.
	200,000.	4%	8,000.		200,000.	2 %	4,000.	16,000.
	550,000.	5%	27,500.		550,000.	2½%	13,750.	55,000.
	1,000,000.	6%	60,000.		1,000,000.	3 %	30,000.	120,000.
	1,000,000.	7%	70,000.		1,000,000.	3½%	35,000.	140,000.
	1,000,000.	8%	80,000.		1,000,000.	4 %	40,000.	160,000.
5 M.	1,000,000.	9%	90,000.		1,000,000.	4½%	45,000.	180,000.
Above	5,000,000.	10%		15%	3,000,000.	5 %	150,000.	600,000.
					3,000,000.	7 %	210,000.	660,000.
					4,000,000.	10 %	400,000.	1,000,000.
					Above ....15,000,000.	15 %	.....	

The above shows the existing and proposed Estate Duty on Estates up to *$15,000,000.*

On all amounts above that the combined tax is 30%.

Table showing total tax under existing and proposed acts on estates ranging in value from $1,000,000. to $30,000,000.

Combined Tax:						
On Estate of	1,000,000.	82,000.	On Estate of	8,000,000.		1,232,000.
" " "	2,000,000.	202,000.	" " "	11,000,000.		1,942,000.
" " "	3,000,000.	342,000.	" " "	15,000,000.		2,442,000.
" " "	4,000,000.	502,000.	" " "	20,000,000.		3,442,000.
" " "	5,000,000.	682,000.	" " "	25,000,000.		5,942,000
			" " "	30,000,000.		7,442,000.

For Estates exceeding $30,000,000. at 30% upon the excess.

EXISTING FEDERAL ESTATE TAX LAW

ACT OF SEPTEMBER 8, 1916
AMENDED MARCH 3, 1917

AND [*in italics*] PROPOSED AMENDMENT*

Amend Section 203 by adding at the end of subdivision (a) a further paragraph numbered (3) so that Section 203 will read as follows:—

SEC. 203. That for the purpose of the tax the value of the net estate shall be determined——

(a) In the case of a resident, by deducting from the value of the gross estate——

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of $50,000;

(3) *All bequests, legacies, devises or gifts to the United States, or to any state, or to any political division thereof, for exclusively public purposes, and all bequests, legacies, devises or gifts for uses of a religious, literary, charitable or educational character or for the encouragement of art, or to societies for the prevention of cruelty to children.*

(b) In the case of a non-resident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1)

of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a non-resident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the non-resident not situated in the United States.

NOTE. The above Amendment is based on the exact language of the Exemption clause of the Spanish War Federal Inheritance Tax Act of June 13, 1898. **(See page 6.)**

II. Previous Federal Estate Tax Legislation and Exemptions.

UNITED STATES. The Spanish War Federal Inheritance Tax Act of June 13, 1898, as originally enacted, contained no exemption of charities.

This defect was partly remedied by the amending act of March 2, 1901, which exempted all "bequests or legacies for uses of a religious, literary, charitable or educational character or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, including all bequests or legacies of such character on which the tax imposed had not been paid or collected on the first day of March, 1901."

And by the act of June 27, 1902, it was provided that the Secretary of the Treasury should refund all taxes which had been paid upon bequests or legacies of this character under the act of 1898, thus repealing all taxes under the Spanish War Federal Inheritance Tax Act upon property passing for the religious, literary, charitable, educational and other uses described.

INCOME TAX EXEMPTION. The existing Federal Income Tax Law recognizes the propriety of exempting from its operation the income of educational and charitable institutions. It contains, among others, the following provision:

> "There shall not be taxed under this title any income received by any ..... corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes no part of the net income of which inures to the benefit of any private stockholder or individual." (Act of September 8, 1916, Sec. 11.)

The original Income Tax Law of 1913 contained a similar provision, as did the Act of August 27, 1894, Section 32.

The Corporation Excise Tax Law of August 5, 1909, Section 38, provided a similar exemption.

III. Summary of Existing State Legislation in reference to exemption of bequests, etc., for educational, charitable and other public purposes, from Inheritance Taxation.

I. The following States have no Inheritance Tax Laws:

Alabama
Florida
Mississippi
New Mexico
South Carolina 5

and there are none in

Territory of Alaska
District of Columbia ....2..... 7

—

II. The following States exempt bequests for educational, charitable and other public purposes, in whole or in part, from the operation of their Inheritance Tax Laws:

Arkansas
California
Colorado
Connecticut
Delaware
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Michigan
Minnesota
Missouri
New Hampshire

New Jersey
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Rhode Island
South Dakota
Tennessee
Texas
Vermont
Virginia
Washington
West Virginia
Wisconsin 34
Hawaii also exempts
such bequests ..... 1.....35

—

III. The following States do not provide for such exemption:—

Arizona
Georgia
Maryland
Montana
Nebraska
Nevada
Pennsylvania
Utah
Wyoming... 9

IV. *Summary:*—

Jurisdictions in which there are no Inheritance Tax Laws..... 7
Jurisdictions in which bequests for these purposes are exempted.....35

—

42
Jurisdictions in which such bequests are not exempted. 9

—

51

ARKANSAS exempts all property transferred in good faith to societies, corporations and institutions now or hereafter exempted by law from taxes, or to any public corporation or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose) or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled in possession or expectancy to any such property or to the income thereof."

Laws of 1915, Chap. 189.

CALIFORNIA the same as Arkansas.

Laws of 1911, Chap. 395, Sec. 4.

COLORADO exempts "all transfers of property to the State of Colorado, or to any county, city, town or other municipality, or for the use of public libraries, for religious or charitable purposes exclusively, or for schools and colleges not for profit; *provided, however,* that the same be situated within this state, or the property be limited for use within this state."

Laws of 1913, Chap. 136, Sec. 4.

CONNECTICUT exempts "all property passing to or in trust for the benefit of any corporation or institution located in this state which receives state aid, or for the use of a municipal corporation for public purposes within this state, and all gifts of paintings, pictures, books, engravings, bronzes, curios, bric-a-brac, arms and armor, and collections of articles of public interest passing to any corporation or institution located in this state for preservation and free exhibition for public benefit."

Act of 1915, Chap. 332.

DELAWARE exempts "any property, estate or interest therein passing to or for the use, or in trust for, charitable, educational or religious societies or institutions, or cities or

towns for public improvement, or to school districts or library commissions."

Laws of 1909, Chap. 225, Sec. 1.

IDAHO the same as Arkansas.

Idaho Revised Codes, Title 10, Chap. 5, Sec. 1877.

ILLINOIS exempts "beneficial interests of any property or income therefrom" passing "to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise."

Act of June 14, 1909, Sec. 28.

INDIANA exempts "all property transferred to municipal corporations within the state for strictly county, town or municipal purposes, or to the bishop, rector, pastor, trustee, board of trustees, or governing body of any educational or religious institution, who shall use the property, so transferred solely for religious, charitable or educational purposes, within the state, or to corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred, exclusively for the purpose of their organization, within the state."

Laws of 1913, Chap. 47, Sec. 4.

IOWA exempts property passing:—

"to educational and religious societies or institutions, public libraries and public art galleries within this state and open to the free use of the public";
"to or for hospitals within this state open to the public and not operated for gain, or to societies within this state organized for purposes of public charity, including cemetery associations, but not including societies maintained

by fees, dues or assessments in whose benefits the public may not share";
"to a municipal or political corporation within this state for a purely public purpose."

Laws of 1911, Chap. 68, Sec. 2.

KANSAS exempts property passing "to or for the use of literary, educational, scientific, religious, benevolent and charitable societies or institutions: Provided, such use entitles the property so passing to be exempt from taxation;" and property passing "to or for the use of the state, a county or a municipality for public purposes."

Laws of 1915, Chap. 357.

KENTUCKY exempts "property of any amount bequeathed or transferred to any municipal corporation within this state for public purposes, to institutions of purely public charity, to institutions of education not used or employed for gain by any person or corporation and the income of which is devoted solely to the cause of education, to public libraries, or to any person or persons, society, corporation, institution or association in trust for any of the purposes above mentioned."

Laws of 1916, Chap. 26.

LOUISIANA exempts "any legacy or other donation *mortis causa* to or in favor of any educational, religious or charitable institutions."

Laws of 1912, Chap. 42.

MAINE exempts property passing "to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation."

Maine Revised Statutes, Chap. 8, Sec. 69, as amended by Laws of 1911, Chap. 163.

MASSACHUSETTS exempts property passing "to or for the use of charitable, educational or religious societies or insti-

tutions, the property of which is by the laws of this commonwealth exempt from taxation, or for or upon trust for any charitable purposes, to be carried out within this commonwealth, or to or for the use of the commonwealth or any city or town within this commonwealth for public purposes."

Laws of 1916, Chap. 268.

MICHIGAN exempts property passing "to persons or corporations exempt by law from taxation on real or personal property." (*Laws of 1899, Chap. 188, as amended by Laws of 1903, Chap. 195.*)

This includes "religious, charitable and similar institutions and organizations of a domestic character." (See Instructions issued by Auditor General in 1907, quoted in *Blakemore & Bancroft on Inheritance Taxes, p. 636.*)

MINNESOTA exempts "all property transferred to municipal corporations within the state for strictly county, town or municipal purposes." (Laws of 1911, Chap. 209.)

And by a subsequent act "property of the clear value of two thousand five hundred dollars transferred to a public hospital, academy, college, university, seminary of learning, church or institution of purely public charity within this state." (Laws of 1911, Chap. 372.)

Under this act any charitable bequest in excess of twenty-five hundred dollars was taxable at 5% as the primary rate, subject to certain increases determined by amount, but by Chap. 455 of the Laws of 1913, the primary rate upon such bequests was reduced to 2%, and under the general provisions of the Statute of 1911 the primary rate was subject to a progressive increase reaching three times the primary rate upon all gifts in excess of $100,000.

MISSOURI exempts "property conveyed for some educational, charitable or religious purpose exclusively."

Revised Statutes of 1909, C. 2., Art. 14, Sec. 309.

NEW HAMPSHIRE exempts property passing "to or for the use of educational, religious, cemetery, or other institutions, societies or associations of public charity in this

state, or for or upon trust for any charitable purpose in the state, or for the care of cemetery lots, or to a city or town in this state for public purposes."

Laws of 1915, Chap. 106.

NEW JERSEY exempts "property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, organized under the laws of this state, or operating solely within this state."

Laws of 1914, Chap. 151.

NEW YORK by the law of 1911 exempts "Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for Bible or tract purpose . . . also personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes." (*Act of 1911, Chap. 732.*)

And in 1913 added the following exemption:

"Exemption of certain personal property. A transfer of pictures, statuary, works of art, antiques, books, manuscripts or other similar personal property shall be exempted from and not subject to the provisions of this article if within two years after such transfer the person to whom such transfer is made shall present the same to the state, or to a municipal corporation of the state for educational, scientific, literary, library, or historical purposes, and if the tax thereon shall have been theretofore paid the amount thereof shall be refunded in accordance with the provisions of this article." (*Laws of 1913, Chap. 639.*)

NORTH CAROLINA by Act of 1911 (Chap. 46, Sec. 6) placed property passing for religious, charitable or educational purposes in the exempt class with husband and wife, but by the Revised Law of 1913 (Chap. 201) husband and wife were placed in the 1% class and the charitable exemption seems to have been omitted.

NORTH DAKOTA exempts "all bequests and devises of property within this state when the same is for one of the following charitable purposes, namely, the relief of aged, indigent and poor, maintenance of sick or maimed or for the support or education of orphans or indigent children."

Laws of 1913, Chap. 185, Sec. 24.

OHIO exempts property passing "to the State of Ohio under the intestate laws of the State, or embraced in a bequest, devise, transfer or conveyance to, or for the use of the State of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution in this state for purpose only of public charity or other exclusively public purposes . . . while used exclusively for any of such purposes."

Ohio General Code of 1910, Sec. 5332.

OKLAHOMA exempts all transfers "made in good faith for religious, charitable or educational purposes and uses."

Laws of 1915, Chap. 162, Sec. 4.

OREGON exempts "devises, bequests, legacies and gifts to benevolent, charitable or educational institutions incorporated within this state and actually engaged in this state in carrying out the objects and purposes for which so incorporated, or to any person or persons to be held in trust for any such institution in lieu thereof."

Act of 1905, Chap. 178, Sec. 1.

RHODE ISLAND exempts "all property or interests transferred to any corporation, association, or institution, located in Rhode Island, which is exempt from taxation by charter or under the laws of this state, or to any corporation, association, or institution, located outside of this state, which if located within this state would be exempt as aforesaid, or to any person in trust for the same, or to any city or town in this state for public purposes."

Laws of 1916, Chap. 1339.

SOUTH DAKOTA exempts "all property transferred to municipal corporations within the state for strictly county, town or municipal purposes; also.....property of the clear value of two thousand five hundred dollars transferred to a public hospital, academy, college, university, seminary of learning, church or institution of purely charity within this state."

Laws of 1915, Chap. 217.

TENNESSEE exempts all property passing "to any religious, charitable, scientific, literary or educational institution."

Laws of 1903, Chap. 561.

Note: This exemption has been held to violate the Tennessee Constitution——*In re Speed,* not yet reported.

TEXAS exempts property passing to "any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state."

Laws of 1907, Chap. 21, Sec. 1.

VERMONT exempts property passing to a "bishop in his ecclesiastical capacity for religious uses within this state, or a city or town for cemetery purposes"; and also property passing to "every charitable, educational or religious society or institution . . . created and existing under and by virtue of the laws of this state and having its principal office herein."

Statutes of 1906, Chap. 38, Sec. 822, as amended by Laws of 1908, Chap. 31, and Laws of 1910, Chap. 55.

VIRGINIA exempts property passing where the "bequest or devise is exclusively for state, county, municipal, benevolent, charitable, educational, or religious purposes."

Virginia Code, Sec. 44, as amended by Laws of 1910, Chap. 148.

WASHINGTON Same as North Dakota.

Laws of 1901, Chap. 55, as amended by Laws of 1905, Chap. 93.

WEST VIRGINIA exempts "all property transferred to a person or corporation in trust or use solely for educational, literary, scientific, religious or charitable purposes, or to the state or any county or municipal corporation thereof for public purposes, provided the property so transferred is used for the purposes herein mentioned in this state."

Act of August 8, 1904, as amended by Act of Feb. 22, 1907, and Chap. 63 of the Acts of 1909.

WISCONSIN exempts property passing to "county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state

organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state."

Statutes of Wisconsin, Sec. 1087-1.

HAWAII the same as Arkansas.

Laws of 1905, No. 102 as amended by Laws of 1909, Act 147.

IV. Gifts and Bequests to Education and Philanthropy, 1913 to 1915.*

The American people imposed upon themselves a voluntary tax for the Public Welfare of $665,123,854 during the years 1913-1915. The gifts and bequests made for various purposes in 1915 show a falling off in amount as compared with 1914. This decrease was to be expected on account of the immense sums which were contributed to various foreign relief funds. Adding such contributions, it is probable that more actual money was given away in 1915 than ever before. The total amount thus given could not have been less than $300,000,000. Outside of money given for war relief and kindred purposes, the total for 1915 amounted to $146,682,930, compared with $318,599,482 in 1914 and $199,841,442 in 1913. These sums take into account only donations of a public character. If there should be added all those privately given, the total would have been more. These sums are identified as follows:

To charities of various kinds.....	$79,861,329
To educational institutions.....	35,354,338
To religious organizations.....	17,611,862
To art museums, galleries, and various municipal institutions.....	12,939,401
To libraries	916,000

From the women of the country there was contributed to the total sum $28,304,658.

*The New International Year Book 1915.

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